IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

W.A.No.284 of 2006

AGAINST THE JUDGEMENT IN O.P.1148/2003 Dated 21/10/2005

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APPELLANT: PETITIONER:-

B.B.PANDARATHIL,
NAMPIMADOM,
ERATHUKULAKKADA,
KALAYAPURAM VILLAGE,
KOTTARAKKARA TALUK.

BY ADV. SRI.V.N.ACHUTHA KURUP (SR.)
SMT.BINDU SREEKUMAR

RESPONDENTS: RESPONDENTS:-

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1. THE SUB COLLECTOR, KOLLAM.

2. THE TAHSILDAR, KOTTARAKKARA.

3. B.RAMESH KLUMAR PANDARATHIL,
NAMPIAMDOM,
ERATHUKULAKKADA,
KULAKKADA P.O.
KOTTARAKKARA TALUK.

R1 & R2 BY SPECIAL GOVERNMENT PLEADER SRI.VINOD CHANDRAN.
R3 BY ADV.SRI.T.R.HARIKUMAR.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 01/10/2007, ALONG WITH WA NO.993 OF 2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

H.L.Dattu, C.J. & K.T.Sankaran, J.

W.A.Nos.284 of 2006 & 993 of 2006

Dated, this the 1st day of October, 2007

JUDGMENT

H.L.Dattu,C.J.

Since common questions of law and facts are involved in these Writ Appeals, they are clubbed together, heard and disposed of by this common order.

(2) W.A.No.993 of 2006 is filed by one B.Rameshkumar Pandarathil, S/o.B.B.Pandarathil. The son is aggrieved by the orders passed by the learned Single Judge in O.P.No.1148 of 2003 dated 21.10.2005. W.A.No.284 of 2006 is filed by Sri.B.B.Pandarathil, who claims to be the father of B.Rameshkumar Pandarathil. He also has questioned the correctness or otherwise of the order passed by the learned Single Judge.

(3) The grievance of the appellants in both these appeals is that without issuing an appropriate notice to the person responsible for payment of tax under the provisions of the Kerala Building Tax Act ("Act" for short), the Tahsildar, Kottarakkara has passed an order quantifying the Building Tax payable by Sri. B.B.Pandarathil. Aggrieved by the said order they had filed appeals before the first appellate authority, who has also rejected the appeal. It is further stated that challenging the order passed by the Tahsildar and the Sub Collector, Kollam the father alone had approached this Court in O.P.No.1148 of 2003.

(4) The learned Single Judge by his order dated 21st October, 2005 has rejected the Original Petition and has permitted the official respondents to recover the amounts due under the Act by attaching the property in question and by effecting the sale of attached property.

(5) Sri.Vinod Chandran, the learned Special Government Pleader very fairly states that before passing the order of assessment the Tahsildar under the provisions of the Act, had not issued any notice to Sri.B.Rameshkumar Pandarathil, who claims to be the owner of the property.

(6). In the instant case, it is the claim of the father that he is no more the owner of the property, since he has assigned all his rights and interests in the immovable property to his son. The son claims that he is the actual owner of the property and therefore, the Tahsildar should have issued notice to him before passing any order which is adverse to his interest.

(7). The facts would reveal, it is the son, namely, B.Rameshkumar Pandarathil is the real owner of the immovable property which is being assessed for the purpose of building tax. Therefore, before passing any order which is adverse to the interest of the real owner of the property, a notice and an enquiry should have been held by the authority before quantifying the tax liability under the Act. Since that has not been done, in our view, the whole exercise done by the authority is in violation of principles of natural justice. Therefore, we cannot sustain the impugned order. Accordingly, the following:

Order

(i) Both the appeals are allowed.

(ii) The orders passed by the learned Single Judge, Tahsildar, Kottarakkara and the Sub Collector, Kollam are set aside.

(iii) Now the matter is remanded to the Tahsildar, Kottarakkara to redo the matter in accordance with law after issuing appropriate notice to Sri.B.Rameshkumar Pandarathil, who claims that he is the owner of the property for which B.B.Pandarathil, the father, has no objection whatsoever.

(iv) This exercise, the Tahsildar, Kottarakkara shall complete within two months from today.

(v) Consequently, I.A.No.524 of 2006 in W.A.No.284 of 2006 is rejected.

Ordered accordingly.

H.L.Dattu
Chief Justice

K.T.Sankaran
Judge

vku/DK.